

803 KAR 2:010. Board procedures.

RELATES TO: KRS 338.051

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY, FUNCTION, AND CONFORMITY: Pursuant to the authority granted the Kentucky Occupational Safety and Health Standards Board by KRS 338.051, the following rules and administrative regulations are adopted, governing the procedure of the Kentucky Occupational Safety and Health Standards Board. This administrative regulation identifies in detail the procedure to be followed by the board. Necessary for effective enforcement of the purposes and policies of the Occupational Safety and Health Act which is to insure so far as is possible, safe and healthful working conditions of Kentucky workers (KRS 338.011).

Section 1. As used in these rules, unless the context clearly requires otherwise:

- (1) "Board" means Kentucky Occupational Safety and Health Standards Board.
- (2) "Chairman" means chairman of the Kentucky Occupational Safety and Health Standards Board.
- (3) "Chairman Pro Tem" means the member of the board that has been elected by the members of the board to chair any meeting of the board in the absence of the chairman.
- (4) "Interested person" means any individual, partnership, joint venture, labor union, trade association, guild, cooperative association, corporation, the Commonwealth of Kentucky or any political subdivision thereof.
- (5) "Party" means any individual, partnership, joint venture, labor union, trade association, guild, cooperative association, corporation, the Commonwealth of Kentucky or any political subdivision thereof who shall have a vested interest to participate in a hearing conducted in accordance with any article of these rules or administrative regulations.
- (6) "Employer" means any entity for whom a person is employed except those employers excluded in Section 9 of this administrative regulation.
- (7) "Employee" means any person employed except those employees excluded in Section 9 of this administrative regulation.

Section 2. All board members and the chairman of the board shall be appointed by the Governor who shall administer the oath of office when said board is convened by the Secretary of the Labor Cabinet.

Section 3. The board shall meet for the purpose of considering and recommending the adoption and promulgation of occupational safety and health rules, administrative regulations, standards, and secure all expertise, testimony, and evidence necessary to accomplish the purpose of KRS Chapter 338. The board may also consider the revision, revocation, or modification in whole or in part of such safety and health rules, administrative regulations, and standards.

Section 4. The published standards of agencies of the Commonwealth of Kentucky and recognized standards producing organizations which are not agencies of the Commonwealth which are legally incorporated by reference in these rules, have the full force and effect as if they were set forth in their entirety herein. Copies of the standards which are incorporated by reference may be examined in the office of the Secretary of State, Commonwealth of Kentucky, Frankfort, Kentucky. Copies of such private standards may be obtained from the issuing organizations.

Section 5. The board shall not adopt standards for products distributed or used in interstate commerce which are different from federal standards for such products unless such standards are

required by compelling local conditions and do not unduly burden interstate commerce.

Section 6. The board shall meet semiannually or when additional meetings are needed, at the call of its chairman in Frankfort, Kentucky, unless another place of meeting shall be designated by the chairman.

Section 7. A majority of the board constitutes a quorum for the transaction of business. Recommendations, reports, or other decisions of the board require a vote of not less than a majority of all members present. The chairman shall have the same rights and duties as all other members, including the right to introduce, discuss, and vote on any matter before the board.

Section 8. The board shall keep and preserve a record of the time and place of all of its meetings, the members present, the votes and all other formal proceedings, including the appointment of committees. Committees shall keep and preserve a similar record. These records shall be made available to any interested person upon request at prescribed rates.

Section 9. All standards, rules, and administrative regulations adopted by the board shall apply to all employers and employees within the Commonwealth except:

(1) Employees of the United States Government.

(2) Employers, employees and places of employment over which federal agencies other than the Occupational Safety and Health Administration of the United States Department of Labor exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health.

Section 10. (1) If a particular standard is specifically applicable to a condition, practice, means, method, operation, or process, it shall prevail over any different general standard which might otherwise be applicable to the same conditions, practice, means, method, operation, or process.

(2) Any standard shall apply according to its terms to any employment and place of employment in any industry, even though particular standards are also prescribed for that particular industry.

(3) In the event a standard protects a class of persons larger than employees, the standard shall be applicable under these rules only to employees and their employment and place of employment.

Section 11. (1)(a) Prior to the adoption, promulgation, modification, or revocation of any standard, administrative regulation or order, the board shall conduct a public hearing. Notice of such hearing shall be published not less than ten (10) days before the hearing in a newspaper of general circulation stating the date, time and place of such hearing. A brief description of the proposed standard, administrative regulation or order shall be contained therein.

(b) Paragraph (a) of this subsection notwithstanding, notice shall not be required prior to the adoption of federal standards which have been received by the Labor Cabinet after general notice of the board meeting has been published.

(2)(a) Any interested person including an employer, employee, or representative of the employees may petition in writing to the Secretary of the Labor Cabinet to promulgate, modify, or revoke a standard. The petition should set forth the terms or the substance of the rules desired, the effects thereof if promulgated, and the reason thereof.

(b) Within a reasonable time after the receipt of a submission pursuant to paragraph (a) of this subsection, the secretary shall notify the Kentucky Occupational Safety and Health Standards Board and the board may afford an opportunity for a hearing.

(3) Hearings by the board shall be conducted in accordance with the following rules and procedures:

(a) These rules and procedures may be suspended or modified when deemed necessary.

(b) The "presiding officer" shall be the chairman of the board or the chairman pro tem. A chairman pro tem shall be elected whose duties shall be to chair any meeting of the board in the absence of the chairman. The chairman pro tem shall be a member of the board and shall not lose the right to vote while acting as chairman. The chairman pro tem shall be elected by the members of the board by a majority vote. The chairman pro tem shall be elected for a term of two (2) years or until his successor is elected. In the event the chairman pro tem ceases to be a member of the board prior to the expiration of his term as chairman pro tem, a new chairman pro tem shall be elected by the board at the next board meeting. In the event both the chairman and the chairman pro tem are absent at the same meeting, a temporary chairman pro tem shall be elected for the purpose of chairing that particular meeting only.

(c) Any interested person may appear at the hearing to offer evidence either on his behalf or the behalf of any other person; provided, that at the opening of such hearing, or at an earlier time as the presiding officer shall by appropriate notice direct, such person shall file with the presiding officer a notice of his appearance which shall set forth:

1. Name and address of person appearing;
2. Name and address of person represented, if any; and
3. Approximate length of time represented for presentation.

(d) In order to maintain orderly and expeditious procedure, each person filing a notice of appearance will be notified, if practicable, of the approximate day and the place at which he may offer evidence before the hearing. If such person does not appear at the time set in the notice, he will not be permitted to offer evidence at any time except by special permission of the presiding officer.

(e) At the discretion of the presiding officer, the hearing may be continued from day to day, or adjourned to a later date, or to a different place, by announcement thereof at the hearing by the presiding officer, or by other appropriate notice.

(f) All evidence must be presented under oath or affirmation, which shall be administered by the presiding officer.

(g) For reasons of unavailability or for other good cause shown, the testimony of any witness may be taken by deposition. Depositions may be taken orally or upon written interrogatories before any person designated by the chairman and having power to administer oaths.

(h) Any party desiring to take the deposition of a witness may make application in writing to the chairman setting forth:

1. The reasons why such depositions should be taken;
2. The time when, the place where, and the name and post office address of the person before whom the deposition is to be taken;
3. The name and address of each witness; and
4. The subject matter concerning which each witness is expected to testify.

(i) Such notice as the chairman may order shall be given by the party taking the deposition to every other party.

(j) Each witness testifying upon deposition shall be sworn, and the parties not calling him shall have the right to cross-examine him. The questions propounded and the answers thereto, together with all objections made, shall be reduced to writing, read to the witness, subscribed by him, and certified by the officer before whom the deposition is taken. Thereafter, the officer shall seal the deposition, with two (2) copies thereof, in an envelope and mail the same by registered mail to the chairman. Subject to such objections to the questions and answers as were noted at the time of taking the deposition and would be valid were the witness personally present and testifying,

such deposition may be read and offered in evidence by the party taking it as against any party who was present, represented at the taking of the deposition, or who had due notice thereof. No part of a deposition shall be admitted in evidence unless there is a showing that the reasons for the taking of the deposition in the first instance existed at the time of the hearing.

(k) Whenever appropriate to a just disposition of any issue in a hearing, the chairman may allow discovery by any other appropriate procedure, such as by written interrogatories upon a party, production of documents by a party, or by entry for inspection of the employment involved.

(l) The hearing shall be stenographically reported and a transcript made which will be available to any person by prescribed rates upon request made to the official reporter.

(m) Written documents or exhibits, except as otherwise permitted by the presiding officer, must be offered in evidence by a person who is prepared to testify as to the authenticity and trustworthiness thereof, and who shall, at the time of offering the documentary exhibits, make a brief statement as to the contents and manner of preparation thereof.

(n) Written documents and exhibits shall be tendered in duplicate and the persons preparing the same shall be prepared to supply additional copies if such are ordered by the presiding officer. Where evidence is embraced in a document containing matter not intended to be put in evidence, such document will not be received, but the person offering the same may present to the presiding officer the original document together with two (2) copies of those portions of the documents intended to be put in evidence. Upon presentation of such copies in proper form, the copies will be received in evidence.

(o) Subpoenas requiring the attendance of witnesses or the presentation of documents at any designated place of hearing may be issued by the presiding officer at his discretion, and any person appearing in the proceeding may apply in writing for the issuance by the presiding officer of the subpoena. Such application shall be timely and shall identify exactly the witness or document and state fully the nature of the evidence proposed to be secured.

(p) Witnesses summoned by the presiding officer shall be paid the same fee and mileage as are paid witnesses in the courts of the Commonwealth of Kentucky. Witness fees and mileage shall be paid by the party at whose instance witnesses appear, and the presiding officer before issuing a subpoena may require a deposit of an amount adequate to cover the fees and mileage involved.

(q) The rules of evidence prevailing in courts of law or equity shall not be controlling.

(r) The presiding officer may, at his discretion, permit any person appearing in the proceeding to cross-examine any witness offered by another person insofar as is practicable, and to object to the admission or exclusion of evidence by the presiding officer. Requests for permission to cross-examine a witness offered by another person and objections to the admission or exclusion of evidence shall be stated briefly with the reasons for such request or objection. Such requests or objections shall become a part of the record, but the record shall not include argument thereon except as ordered by the presiding officer.

Section 12. (1) The chairman shall have the power to appoint standing and special committees.

(2) A committee shall meet at the call of its chairman or the chairman of the board at the time and place designated by the person making such call.

Section 13. Any rule, administrative regulation or standard promulgated, modified or revoked under these rules may contain a provision delaying its effective date for such period (not in excess of ninety (90) days) as the board determines may be necessary to ensure that affected employees and employers will be informed of the existence, modification or revocation of the rule, administrative regulation or standard and of its terms and that employers affected are given an opportunity to familiarize themselves and their employees with the existence of the requirements of the rule, ad-

ministrative regulation or standard.

Section 14. Any interested person may at any time petition the board in writing to revise, amend, or revoke any provision of these rules. The petition shall set forth either the terms or the substance of the rule desired, with a concise statement of the reasons therefor and the effects thereof. (OSH 4-1; 1 Ky.R. 833; eff. 5-14-75; Am. 8 Ky.R. 1444; eff. 7-7-82; TAm eff. 8-9-2007; TAm eff. 9-8-2011.)